

GRANTED ISSUES

NOTE: THE WORDING OF THE ISSUES IS TAKEN VERBATIM FROM THE PARTIES' PETITIONS FOR DISCRETIONARY REVIEW.

ISSUES GRANTED AUGUST 22, 2018

18-0438 HYLAND, RICHARD

INTOXICATION MANSLAUGHTER

1. The Thirteenth Court of Appeals erred in suggesting that the sustaining of a *Franks* motion and the purging of false statements from a search warrant affidavit triggers a heightened legal standard of "clear" probable cause with regard to the remaining allegations in the affidavit.
2. The Thirteenth Court of Appeals erred in concluding that a strong smell of alcohol on the breath of a driver involved in a serious motor vehicle accident does not furnish probable cause for a blood warrant.

18-0578 SIMPSON, ROBVIA LENEICE

**ASSAULT ON PUBLIC SERVANT,
AGGRAVATED ASSAULT**

Does *Doan* apply when a defendant enters a plea of "true" to new criminal offenses in a motion to proceed or probation revocation and does the true plea legally bind the defendant guilty in the new criminal offenses?

ALPHABETICAL LISTING WITHOUT ISSUES

<u>PDR NO.</u>	<u>NAME</u>	<u>DATE GRANTED</u>
17-1346	ALFARO-JIMENEZ, PABLO	04/11/18
17-0797	ARROYO, DAVID	10/25/17
17-1212	ASBERRY, DAMON LAVELLE	03/28/18
17-0638	BEHAM, RODERICK	10/04/17
17-0907	BRAUGHTON, CHRISTOPHER ERNEST, JR.	12/06/17
17-1359	BRIGGS, SANDRA COY	03/21/18
17-0205-08	CARSON, GARY	06/28/17
17-0771	CHAMBERS, JOHN	01/10/18
18-0314	CUEVAS, JEREMY	06/06/18
18-0265	DAVENPORT, MARC	06/20/18
18-0254	DOYAL, CRAIG	06/06/18
18-0445	DUNNING JOHNNIE	06/20/18
17-0538	ETTE, EDDIE OFFIONG	09/13/17
17-1024/25	FINEBERG, LISA ANN	02/07/18
17-1360	FISK, WALTER	03/28/18
17-0711	FRASER, MARIAN	11/01/17
18-0038	FRENCH, CODY DARUS	04/18/18
18-0035	GARCIA, FREDDY	04/11/18
17-0344	GARCIA, JOEL	09/13/17
17-0710	GARRELS, ELIZABETH ANN	08/23/17
17-0812	GOLLIDAY, JOSHUA	02/07/18
16-1269	HOLDER, CHRISTOPHER JAMES	06/07/17
18-0275/76	HUGHITT, SHANA LYNN	05/23/18
18-0438	HYLAND, RICHARD	08/22/18
16-1445	INGERSON, FRED EARL III	04/26/17
16-1411	JACOBS, JOSHUA	04/12/17
18-0086	JENKINS, DEONDRE JAVQUEEN	04/18/18
17-0197	JOHNSON, DONDRE	05/03/17
17-1289	JONES, DEDRIC D'SHAWN	04/25/18
18-0552	JONES, JORDAN BARTLETT	07/25/18
17-0563	LANG, TERRI REGINA	10/04/17
18-0005	LITCHFIELD, MARGARET FAYE	06/06/18
17-0549-51	MARKS, WILLIAM	09/13/17
17-0942-47	MARTINEZ, ANDREY	12/13/17
17-0878	MARTINEZ, JUAN JR.	01/24/18
17-0324	MARTINEZ, ROGER ANTHONY	07/26/17
18-0207	MILTON, DAMON ORLANDO	06/13/18
18-0474	PARKER, ADRIAN JEROME	06/20/18
17-0448	RHOMER, WILLIAM	11/08/17
17-0255	RILEY, CHARLIE	06/20/18
17-0021	RITCHERSON, KAITLYN LUCRETIA	05/03/17
17-1066	ROSS, DAI'VONTE E'SHAUN TITUS	01/24/18
18-0176	RUIZ, JOSE	04/25/18
17-1348	RUIZ, LAURO EDUARDO	03/28/18
17-0264	SEARS, ARMAUD	09/13/17
18-0578	SIMPSON, ROB VIA LENEICE	08/22/18
17-0941	SIMS, CHRISTIAN VERNON	02/14/18
17-0514	SMITH, FERNANDO	08/23/17
17-0715	SMITH, JOSEPH	12/13/17
17-0790	THOMAS, KEITHRICK	11/22/17
17-0967	TRAYLOR, PETER ANTHONY	12/13/17
17-0399	WALKER, KENYETTA DANYELL	08/23/17
17-0792	WATERS, AMANDA	10/25/17
17-1199	WILLIAMS, ANDREW LEE	03/21/18
17-1100	WOOD, CYNTHIA KAYE	01/10/18

NUMERICAL LISTING WITH ISSUES GRANTED

**16-0323
16-0324
16-0325**

SAFIAN, ANTHONY ROBERT

08/24/16

APPELLANT'S

TARRANT

**AGGRAVATED ASSAULT
POSSESSION OF HEROIN
EVADING ARREST**

The court of appeals erred when it affirmed the trial court's denial of the lesser-included jury charge of deadly conduct in the trial for aggravated assault on a public servant.

16-1269

HOLDER, CHRISTOPHER JAMES

06/07/17

APPELLANT'S

COLLIN

CAPITAL MURDER

The Court of Appeals erred in holding the State's petition to obtain the Appellant's cell phone records set forth the "specific and articulable facts" required by federal law under 18 U.S.C. section 2703(d).

16-1411

JACOBS, JOSHUA

04/12/17

STATE'S

BOWIE

**AGGRAVATED SEXUAL
ASSAULT**

Is it constitutional error to prevent defense counsel from asking a question during voir dire that could give rise to a valid challenge for cause?

16-1445

INGERSON, FRED EARL III

04/26/17

STATE'S

HOOD

CAPITAL MURDER

In a capital case, did the two-justice panel fail to defer to the verdict, apply defunct sufficiency standards, and ignore inculpatory evidence when Appellant was the last person with the victims, had been rejected by them, fled the scene, had a .38— the likely weapon, had a .38 under his car seat the day after, had gun-shot residue on his pants and car seat, and acted suspiciously?

17-0021

RITCHERSON, KAITLYN LUCRETIA

05/03/17

APPELLANT'S

TRAVIS

MURDER

The Court of Appeals failed to apply this Court's decision in *Saunders v. State*, 840 S.W.2d 390 (Tex.Cr.App. 1992) in determining that petitioner was not entitled to a lesser-included charge on manslaughter when the jury could reasonably have interpreted petitioner's *mens rea* as reckless about causing death.

17-0197

JOHNSON, DONDRE

05/03/17

STATE'S

TARRANT

THEFT

1. In determining whether the evidence is legally sufficient to support the jury's verdicts, the court of appeals failed to measure the evidence, as the court interpreted the evidence, against a hypothetically correct jury charge that included, as the dissent pointed out, a full parties charge and a correct description of the financial instrument stolen, as required under *Garza Vega v. State*, 267 S.W.3d 912, 915-26 (Tex. Crim. App. 2008).

2. In determining whether the evidence is legally sufficient to support the jury's verdicts, the court of appeals erred in failing to view the evidence in the light most favorable to the jury's verdicts, thereby substituting its resolution of fact issues for that of the jury's. See *Adames v. State*, 353 S.W.3d 854, 861 (Tex. Crim. App. 2011); see also *Jackson v. Virginia*, 433 U.S. 307, 319 n.12 (1979).

17-0205

CARSON, GARY

06/28/17

17-0206

17-0207

17-0208

STATE'S

BOWIE

**ASSAULT
BAIL JUMPING**

1. Is a waiver of the right to appeal following a plea of guilty without a recommended sentence invalid because the defendant could not know that an error would occur at the punishment phase?

2. Is the State's waiver of its right to a jury trial adequate consideration to uphold a defendant's waiver in the face of potential future errors and uncertain punishment?
3. Does the classification of an error affect the validity of an appellant's waiver of his right to appeal?
4. May the trial court's unobjected-to consideration of facts not in evidence be raised for the first time on appeal?

17-0264
STATE'S

SEARS, ARMAUD

JEFFERSON

09/13/17
AGGRAVATED ROBBERY

Does the record contain no evidence that Appellant was aware that any firearm would be, was being, or had been used or exhibited during the robbery, as the Ninth Court of Appeals held, when there is evidence that one of the intruders carried a long, rifle-like gun and that Appellant transported this intruder to Brown's house directly before the robbery?

17-0324
STATE'S

MARTINEZ, ROGER ANTHONY
VICTORIA

07/26/17
POSSESSION OF PROHIBITED
SUBSTANCE IN A
CORRECTIONAL FACILITY

1. The Court of Appeals erroneously decided an important question of state law in a way that conflicts with the applicable decisions of the Court of Criminal Appeals, by finding that the knowledge of supporting officers cannot be used to establish probable cause.
2. The Court of Appeals failed to conduct the required *de novo* review of whether the evidence known to Officer Quinn was sufficient to establish probable cause and that failure constitutes a departure from the accepted and usual course of judicial proceedings that calls for an exercise of the Court of Criminal Appeals' power of supervision.

17-0344
APPELLANT'S

GARCIA, JOEL

EL PASO

09/13/17
INTOXICATION MANSLAUGHTER
POSSESSION OF CONTROLLED
SUBSTANCE

1. The Court of Appeals erred by applying a *de novo* standard of review to the trial court's granting of Appellee's motion to suppress evidence, failing to give "almost total deference" to the trial court's findings of fact to support its conclusion that no exigent circumstances existed.
2. The Court of Appeals erred by considering evidence that did not become known to law enforcement until after the warrantless taking of Appellee's blood.

17-0399
STATE'S

WALKER, KENYETTA DANYELL
ORANGE

08/23/17
ENGAGING IN ORGANIZED
CRIMINAL ACTIVITY

Can a conviction for a charged, but nonexistent, offense be reformed to a subsumed and proven offense that does exist?

17-0448
APPELLANT'S

RHOMER, WILLIAM

BEXAR

11/08/17
MURDER

1. Did the appellate court, in affirming the trial court's decision to admit the police officer's expert testimony despite the officer acknowledging he had no requisite qualifications in motorcycle accident reconstruction, violate Texas Rule of Evidence 702?
2. In relying on *Nenno*, instead of *Kelly*, did the appellate court apply an incorrect standard when determining that an accident reconstruction expert's testimony was reliable even though he applied no scientific theory or testing from that field and he had no qualifications in the field of motorcycle accident reconstruction?
3. Should the less rigid *Nenno* standard apply, as opposed to the *Kelly* standard, when an expert in a technical scientific field chose to not apply any of the scientific testing or theory to a particular case?

17-0514
APPELLANT'S

SMITH, FERNANDO

CORYELL

08/23/17
ASSAULT

When a defendant files a timely notice of appeal from a judgment adjudicating his guilt and is later placed on shock community supervision, to complain on appeal about a condition of that community supervision must he file a new notice of appeal?

17-0538
APPELLANT'S

ETTE, EDDIE OFFIONG

TARRANT

09/13/17
MISAPPLICATION OF
FIDUCIARY PROPERTY

The court of appeals erred in affirming a fine included in the judgment which had not been orally pronounced by the trial court at sentencing.

17-0549

MARKS, WILLIAM

09/13/17

17-0550

17-0551

STATE'S

HARRIS

**VIOLATIONS OF PRIVATE
SECURITY ACT**

1. Whether the court of appeals failed to apply the tolling provisions of Texas Code of Criminal Procedure article 12.05(b), in conflict with this Court's decision in *Hernandez v. State*, 127 S.W.3d 768 (Tex. Crim. App. 2004).
2. The Fourteenth Court of Appeals' misinterpretation of Art. 12.05 led it to find that the error in amending the indictment affected the defendant's substantial rights under Tex. R. App. P. 44.2(b).

17-0563

LANG, TERRI REGINA

10/04/17

APPELLANT'S

BURNET

ORGANIZED RETAIL THEFT

1. May this Court adhere to a rule that refuses to allow the consideration of legislative history to interpret a statute unless the statute is ambiguous, when the Legislature states that legislative history may be considered whether or not a statute is ambiguous?
 - a. Must *Boykin v. State*, 818 S.W.2d 782 (Tex. Crim. App. 1991) and its progeny be overruled to the extent they conflict with Texas Government Code Section 311.023, which Texas Penal Code Section 1.05(b) makes applicable to the Penal Code?
2. Does the organized retail theft statute admit of more than one reasonable interpretation with respect to whether the statute may be violated by a solitary actor committing ordinary shoplifting, and does consulting the plain language alone lead to absurd results that the legislature could not possibly have intended?
3. May a shoplifter violate the organized retail theft statute by committing ordinary shoplifting while acting alone?

17-0638

BEHAM, RODERICK

10/04/17

STATE'S

BOWIE

AGGRAVATED ROBBERY

1. Is expert testimony that a defendant holds himself out as a gang member—without proof he is one—relevant to sentencing?
2. In assessing harm, did the court of appeals err in failing to isolate the opinion testimony from the photographs on which that opinion is based?

17-0710

GARRELS, ELIZABETH ANN

08/23/17

APPELLANT'S

MONTGOMERY

DRIVING WHILE INTOXICATED

Has a defendant who did not object to a trial court's declaration of mistrial, despite an adequate opportunity to do so, impliedly consented to the mistrial?

17-0711

FRASER, MARIAN

11/01/17

STATE'S

McLENNAN

MURDER

Can the felonies of reckless or criminally negligent injury to a child or reckless or criminally negligent child endangerment underlie a felony-murder conviction when the act underlying the felony and the act clearly dangerous to human life are one and the same?

17-0715

SMITH, JOSEPH

12/13/17

APPELLANT'S

HARRIS

AGGRAVATED ROBBERY

1. The court of appeals employed the wrong analysis when reviewing the record to determine whether a "voluntary intoxication" instruction was error to include in Appellant's punishment-phase jury charge.
2. The inclusion of an 8.04(a) instruction at punishment violates the Due Process Clause because it could mislead a rational jury into believing that it could not — as a matter of law — consider a defendant's drug-addiction evidence as mitigation; thus the court of appeals's holding that it is not a charge error conflicts with applicable holdings of the U.S. Supreme Court.
3. In its harm analysis of the State's unconstitutional jury argument, the court of appeals did not address how that argument highlighted inadmissible evidence and how it impermissibly increased the likelihood that the jury punished Appellant for an extraneous crime.

17-0734

RAE, RUSSELL BOYD

09/13/17

APPELLANT'S

MARION

DRIVING WHILE INTOXICATED

Did the Court of Appeals err in finding that the prior conviction for operating a watercraft while intoxicated was a final conviction?

17-0771	CHAMBERS, JOHN	01/10/18
APPELLANT'S	CAMERON	TAMPERING WITH
		GOVERNMENTAL RECORD

1. The appellate court improperly reviewed the legal sufficiency of the evidence against Chambers pursuant to § 37.10 of the Texas Penal Code when it refused to acknowledge that the Texas Commission on Law Enforcement was acting in contravention of its legal authority.
2. This Court should summarily grant this petition for discretionary review and remand the case to the court of appeals because of that court's failure to comply with Texas Rule of Appellate Procedure 47.1.
3. The trial court abused its discretion by failing to submit an instruction to the jury on the applicable law regarding the distinction between an employee and a volunteer reservist.
4. The difference between the class A misdemeanor and the felony enhancement pursuant to § 37.10 of the Texas Penal Code is a distinction without a difference. In addition, the appellate court's reliance upon an improper application of law is legally insufficient to uphold a finding of an "intent to defraud."

17-0790	THOMAS, KEITHRICK	11/22/17
APPELLANT'S	HARRIS	POSSESSION OF A
		CONTROLLED SUBSTANCE

Has a Fourth Amendment violation occurred, where a police officer approaches a vehicle passenger, after the passenger has exited the vehicle, and conducts a warrantless search of the passenger's pockets, in the driveway of the passenger's house?

17-0792	WATERS, AMANDA	10/25/17
STATE'S	WICHITA	DRIVING WHILE INTOXICATED

Whether this Court should explicitly overrule *Tarver* and the concept of state collateral estoppel since collateral estoppel should not bar the State from prosecuting a criminal offense following an adverse finding at a probation revocation hearing.

17-0797	ARROYO, DAVID	10/25/17
STATE'S	BEXAR	INDECENCY W/CHILD

1. In light of significant statutory changes, does *Nelson v. State* have continued validity when interpreting § 21.11 of the Texas Penal Code?
2. Under § 21.11 of the Texas Penal Code, what is a "breast"?

17-0812	GOLLIDAY, JOSHUA	02/07/18
STATE'S	TARRANT	SEXUAL ASSAULT

1. Did the majority opinion correctly hold that TEX.R.EVID. 103 trumps TEX.R.APP. P. 33.1 and relieves an appellant of the need to have informed the trial court of the legal basis for admitting the proffered evidence?
2. Does the majority opinion conflict with precedent from this Court when it holds that an appellate complaint about the exclusion of defense evidence need not comport with the appellant's trial objection?
3. Did the majority opinion contradict this Court's precedent by holding, in the alternative, that Appellant preserved his constitutional complaints about the exclusion of defense evidence with, among other things, a general remark, made during opening statement, and his argument that the victim's testimony from the first voir dire hearing was relevant so the jury could "get the whole picture"?
4. Did the majority opinion properly deal with Appellant's en masse first offer by plucking out items when the offer contained other material that was inadmissible?
5. Did the majority opinion correctly find constitutional violations in the exclusion of defense evidence?

17-0878	MARTINEZ, JUAN, JR.	01/24/18
APPELLANT'S	BEE	INTOXICATION
		MANSLAUGHTER

The Court of Appeals erred in holding that the trial court properly granted the defendant/appellee's motion to suppress evidence that revealed the results of testing of the blood of the defendant/appellee.

17-0907	BRAUGHTON, CHRISTOPHER ERNEST, JR.	12/06/17
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APPELLANT'S**HARRIS****MURDER**

1. What is the standard of review for evaluating a claim of legally insufficient evidence on the State's non-evidentiary burden of persuasion in a claim of self-defense/defense of others?
2. Whether the intermediate-appellate court erred when it determined that the State met its non-evidentiary burden of persuasion and that Appellant was unjustified in acting in self-defense/defense of others?
3. Whether the trial court's erroneous decision not to issue a requested-lesser-included offense was harmless as the intermediate-appellate court concluded in its re-issued opinion??

17-0941**SIMS, CHRISTIAN VERNON****02/14/18****APPELLANT'S****LAMAR****MURDER**

1. The Court of Appeals erred by ruling that under Tex. Code Crim. Proc. Art. 38.23(a), violations of the Federal Stored Communication Act ("SCA") and Tex. Code Crim. Proc. Art. 18.21 do not require suppression of evidence pertaining to the warrantless pinging of a cellphone because: (1) the plain-language of Tex. Code Crim. Proc. Art. 38.23(a) states that no evidence obtained by an officer or other person in violation of any provisions of Texas or federal law shall be admitted in evidence against the accused; (2) Tex. Code Crim. Proc. Art. 38.23(a) is intended to provide greater protection than the Fourth Amendment; and (3) it is irrelevant that the SCA and Tex. Code Crim. Proc. Art. 18.21 do not provide that suppression is available since they are laws of Texas and the United States, and neither prohibits suppression of illegally obtained evidence under Art. 38.23(a).
2. The Court of Appeals erred by holding that Appellant was not entitled to a reasonable expectation of privacy in the real-time, tracking-data that was illegally seized because under the Fourth Amendment and Tex. Code Crim. Proc. Art. 38.23(a), a person has a legitimate expectation of privacy in real-time tracking-data regardless of whether he is in a private or public location.

17-0942-47
STATE'S**MARTINEZ, ANDREY****HIDALGO****12/13/17****BURGLARY OF A BUILDING**

Are misstatements during a plea colloquy that a defendant's sentences could be stacked enough to render a defendant's plea involuntary without any record of what the defendant knew and why he pleaded guilty?

17-0967**TRAYLOR, PETER ANTHONY****12/13/17****STATE'S****COLLIN****BURGLARY OF A HABITATION**

1. Has the court of appeals misapplied *Blueford v. Arkansas* by holding that two jury notes indicating the jury deadlocked on a lesser-included offense amount to an informal verdict of acquittal on the charged offense?
2. Do mere jury notes regarding a deadlock on a lesser-charge contain sufficient indicia to show the jury manifestly intended an informal verdict of acquittal?
3. Did *Blueford v. Arkansas* overrule this Court's precedent that a jury's report of its progress towards a verdict does not amount to an informal verdict of acquittal?

17-1024**FINEBERG, LISA ANN****02/07/18****17-1025****APPELLANT'S****DALLAS****INJURY TO A CHILD**

Did the Fifth Court of Appeals err by holding and determining that the State had a compelling interest in protecting children, including Fineberg's biological children, from sexual exploitation without also determining whether the community supervision modification prohibiting Fineberg's contact with her children was narrowly tailored to serve the compelling state interest?

17-1066**ROSS, DAI'VONTE E'SHAUN TITUS****01/24/18****STATE'S****BEXAR****DISORDERLY CONDUCT**

1. Does an information that tracks the language of section 42.01(a)(8) provide a defendant sufficient notice that he displayed a firearm in a manner calculated to alarm?
2. Did the court of appeals err by applying a First Amendment and Fourteenth Amendment rule to a Sixth Amendment complaint?
3. Is the term "alarm" within the context of section 42.01(a)(8) inherently vague?

17-1100**WOOD, CYNTHIA KAYE****01/10/18**

STATE'S**HARRIS****ATTEMPTED CAPITAL
MURDER**

The lower court erred in holding that an indictment for criminal attempt is fundamentally defective when it does not allege the constituent elements of the underlying offense attempted.

17-1199**APPELLANT'S****WILLIAMS, ANDREW LEE****BRAZORIA****03/21/18****MANSLAUGHTER,
ACCIDENT INVOLVING
PERSONAL INJURY OR DEATH**

The Court of Appeals erred in affirming the trial court's allowing evidence of a drug test without the testimony of the chemist who performed the testing.

17-1212**APPELLANT'S****ASBERRY, DAMON LAVELLE****MCLENNAN****03/28/18****MURDER**

The court of appeals erred in failing to consider the conflict between the new test results and the results presented at trial, as well as the defensive evidence presented by appellant, when deciding whether the new test results cast doubt on the validity of the conviction.

17-1289**STATE'S****JONES, DEDRIC D'SHAWN****HARRIS****04/25/18****ASSAULT**

1. The First Court erred in holding the trial court abused its discretion in excluding impeachment evidence. As the dissenting justice pointed out, the appellant's offer of proof failed to establish a causal or logical relationship between the excluded evidence and the witness's alleged bias. The First Court's opinion provides precedent for appellate courts to reverse trial courts based on speculation of what cross-examination *might* have revealed, rather than what the offer of proof showed it would reveal.

2. The First Court erred by failing to consider the weakness of the defensive evidence in conducting its harm analysis. The First Court looked only at the State's evidence, and ignored the fact that the appellant failed to produce evidence that would support a jury's finding that he acted in self-defense.

17-1346**APPELLANT'S****ALFARO-JIMENEZ, PABLO****BEXAR****04/11/18****TAMPERING WITH A
GOVERNMENT DOCUMENT**

1. Whether the right to a jury trial mandated by U.S. Const. Sixth and Fourteenth Amendments, and U.S. Const. Art. III § 2, and the concepts set out by this Court in *Apprendi* and *Blakely*, is violated by the procedure utilized by the Court of Appeals, that is, a judicial finding of an element not alleged in the indictment or submitted to the jury, which is an unacceptable departure from the jury tradition, an indispensable part of our criminal justice system, by making appellate courts fact finders as to an element not considered by the jury?

2. Whether the right to a jury trial and Due Process required by the Fifth, Sixth, and Fourteenth Amendments, and *Jackson v. Virginia*, 443 U.S. 307, 560 (1979), was violated when the Court of Appeals reformed the Petitioner's conviction to the conviction of a higher offense, when such higher offense was not determined by the jury, the factfinder resulting in a reformed verdict which was not rendered by the jury or the trial court?

17-1348**APPELLANT'S****RUIZ, LAURO EDUARDO****BEXAR****03/28/18****ATTEMPTED SEXUAL
PERFORMANCE BY A CHILD**

1. The Fourth Court of Appeals Majority Opinion misapplies the Standard of Review when examining article 38.23 of the Texas Code of Criminal Procedure.

2. The court of appeals' opinion puts it in conflict with other courts of appeals, which have applied constitutional violation analysis to private individuals under 38.23 of the Texas Code of Criminal Procedure.

3. As Petitioner was the prevailing party at the Motion to Suppress, the court of appeals should have deferred to the trial court and presume it found a violation of law sufficient to trigger the Texas Exclusionary Rule as such a finding is supported by the record.

17-1359**BRIGGS, SANDRA COY****03/21/18**

STATE'S

BEXAR

**INTOXICATION
MANSLAUGHTER**

Whether the Court of Appeals erred in concluding that trial counsel's advice was a misrepresentation of the law that rendered Briggs's plea involuntary when the advice was based on the controlling precedent that existed at the time counsel's advice was given?

**17-1360
STATE'S**

FISK, WALTER

BEXAR

**03/28/18
INDECENCY W/ CHILD (3 CTS)**

1. The current test for determining whether an out-of-state offense is substantially similar to an enumerated Texas offense is too broad. Accordingly, this Court should disavow that test and replace it with one that only compares the elements of the respective offenses.

2. Even if not disavowed, the court of appeals misapplied the current test when it concluded that the military's former sodomy-with-a-child statute is not substantially similar to Texas's sexual-assault statute.

**18-0005
APPELLANT'S**

**LITCHFIELD, MARGARET FAYE
CORYELL**

**06/06/18
MURDER**

In finding the evidence legally sufficient, did the Sixth Court of Appeals fail to consider: was the jury rationally justified in finding guilt beyond a reasonable doubt?

**18-0035
STATE'S**

GARCIA, FREDDY

HARRIS

**04/11/18
AGGRAVATED SEXUAL
ASSAULT**

1. Is the constitutional harm standard the proper test for harm when there was a mere delay in the election versus no election at all and the jury is charged on a specific incident?

2. How specific must the factual rendition of a single incident in the jury charge be to serve the purposes of the election requirement?

**18-0038
STATE'S**

**FRENCH, CODY DARUS
TAYLOR**

**04/18/18
AGGRAVATED SEXUAL
ASSAULT**

1. Does a defendant preserve error regarding juror unanimity when the instruction requested is both an incorrect statement of the law and would not have corrected the error complained of on appeal?

2. Does a defendant suffer harm when a jury charge allows for non-unanimous verdicts as to contact or penetration of either a child's sexual organ or anus, but the evidence is overwhelming as to one charge?

**18-0086
STATE'S**

**JENKINS, DEONDRE JAVQUEEN
BEXAR**

**04/18/18
CONTINUOUS TRAFFICKING
OF PERSONS**

1. Does a charging instrument that does not identify the defendant by name, but which is preceded by a caption that does identify the defendant by name, meet the jurisdictional requirement that a charging instrument name a "person" as required by article V, § 12(b) of the Texas Constitution?

2. Whether *Cook v. State* is outdated in light of *Teal v. State* and *Kirkpatrick v. State*?

**18-0176
STATE'S**

RUIZ, JOSE

GONZALES

**04/25/18
DRIVING WHILE INTOXICATED**

Is it unreasonable under the Fourth Amendment for an officer to rely on a driver's implied consent to a blood draw when the driver was involved in an accident, there is probable cause to believe he is intoxicated, and where the driver's own unconsciousness prevents the officer from effectively obtaining the driver's actual consent?

**18-0207
APPELLANT'S**

**MILTON, DAMON ORLANDO
HARRIS**

**06/13/18
ROBBERY**

Did the Court of Appeals error [sic] in holding the trial court did not abuse its discretion in allowing the State to play a video of a lion attempting to maul an infant during its closing argument?

18-0254 DOYAL, CRAIG 06/06/18
APPELLANT'S MONTGOMERY CONSPIRACY TO CIRCUMVENT
TEXAS OPEN MEETINGS ACT

1. Did the court of appeals err in concluding that § 551.143 did not violate the First Amendment?
2. Did the court of appeals err in finding that § 551.143 was not void for vagueness?

18-0255 RILEY, CHARLIE 06/20/18
APPELLEE'S MONTGOMERY CONSPIRACY TO CIRCUMVENT
TEXAS OPEN MEETINGS ACT

1. The Court of Appeals erred in holding that § 551.143 does not violate the First Amendment.
2. The Court of Appeals erred in holding that § 551.143 is not void for vagueness.
3. The Court of Appeals erred in failing to address claims raised by Riley that were material to its disposition of the issues.

18-0265 DAVENPORT, MARC 06/20/18
APPELLEE'S MONTGOMERY CONSPIRACY TO CIRCUMVENT
TEXAS OPEN MEETINGS ACT

1. The Court of Appeals erred when it held that the Government Code section 551.143 applies to conduct rather than speech and therefore is not subject to strict scrutiny.
2. The Court of Appeals erred when it held that the Government Code section 551.143 is not unconstitutionally overbroad.
3. The Court of Appeals erred when it held that the Government Code section 551.143 is not unconstitutionally vague.

18-0275 HUGHITT, SHANA LYNN 05/23/18
18-0276 STATE'S BROWN ENGAGING IN ORGANIZED
CRIMINAL ACTIVITY;
POSSESSION OF CONTROLLED
SUBSTANCE W/INTENT TO
DELIVER

1. Is possession with intent to deliver included as a listed predicate offense for engaging in organized criminal activity because the offense of delivery of a controlled substance in the Controlled Substances Act includes possession with intent to deliver?

18-0314 CUEVAS, JEREMY 06/06/18
STATE'S BEE ASSAULT ON PUBLIC SERVANT

Is a peace officer moonlighting as private security "lawfully discharging an official duty" for purposes of proving assault on a public servant when acting under Tex. Alco. Bev. Code § 101.07, which dictates: "all peace officers in the state" "shall enforce the provisions of this code."

18-0438 HYLAND, RICHARD 08/22/18
STATE'S NUECES INTOXICATION MANSLAUGHTER

1. The Thirteenth Court of Appeals erred in suggesting that the sustaining of a *Franks* motion and the purging of false statements from a search warrant affidavit triggers a heightened legal standard of "clear" probable cause with regard to the remaining allegations in the affidavit.
2. The Thirteenth Court of Appeals erred in concluding that a strong smell of alcohol on the breath of a driver involved in a serious motor vehicle accident does not furnish probable cause for a blood warrant.

18-0445 DUNNING, JOHNNIE 06/20/18
STATE'S TARRANT AGGRAVATED SEXUAL
ASSAULT

3. Whether the court of appeals properly determined that the post-conviction DNA testing results established a reasonable probability that the appellant would not have been convicted had they been available at the time of trial?
4. Whether the court of appeals gave proper deference to the trial court's determination of historical facts and application-of-law-to-fact issues that turn on credibility or demeanor?
5. Whether the court of appeals considered all the evidence before the trial court in making its article 64.04 finding before determining that post-conviction DNA testing results established a reasonable probability that the appellant would not have been convicted had they been available at the time of trial?

18-0474
STATE'S

PARKER, ADRIAN JEROME
GREGG

06/20/18
ENGAGING IN ORGANIZED
CRIMINAL ACTIVITY;
POSSESSION OF CONTROLLED
SUBSTANCE; TAMPERING WITH
EVIDENCE

1. Is "possession with intent to deliver" a predicate offense for engaging in organized criminal activity because it falls within "unlawful manufacture, delivery...of a controlled substance," which is one of EOCA's enumerated predicate offenses?
2. Can an EOCA conviction predicated on an offense that is not a predicate be reformed to that necessarily subsumed offense?

18-0552
STATE'S

JONES, JORDAN BARTLETT
SMITH

07/25/18
UNLAWFUL DISCLOSURE OF
INTIMATE VISUAL MATERIAL

1. Is Tex. Penal Code § 21.16(b) a content-based restriction on speech that is subject to strict scrutiny?
2. May a court of appeals find a statute unconstitutional based on a manner and means that was not charged?
3. Is Tex. Penal Code § 21.16(b) facially constitutional?

18-0578
STATE'S

SIMPSON, ROB V LENEICE
ANDERSON

08/22/18
ASSAULT ON PUBLIC SERVANT,
AGGRAVATED ASSAULT

Does *Doan* apply when a defendant enters a plea of "true" to new criminal offenses in a motion to proceed or probation revocation and does the true plea legally bind the defendant guilty in the new criminal offenses?